IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7452 of 1990

HON'BLE MR.JUSTICE K.S.JHAVERI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHILALBHAI HEMARAJBHAI UNADKAR

Versus

UNDER SECRETARY

Appearance:

MR DIPAK C RAVAL for Petitioner No. 1

MR KP RAWAL, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/07/2004

ORAL JUDGEMENT

1.0 The petitioner by way of this petition challenged the order passed by the State Government through its Revenue Department dated 2nd February 1990 whereby penalty has been imposed upon the petitioner to deduct Rs.250/- monthly from the pensionary benefits of the petitioner.

2.0 The petitioner was working with the respondent no.2 authority on the post of District Inspector of Land Records, Bhavnagar under the Settlement Commissioner and

Director of Land Records, Gujarat State, Ahmedabad.

2.1 In the year 1978 the petitioner was deputed to Songadh as City Survey Inquiry Officer. Thereafter, in the year 1980, the petitioner was given a chargesheet on two separate grounds. One of the charges was that the order passed by the petitioner in his quasi judicial authority was reversed by the appellate authority which was subject to quasi judicial appeal and revision. In respect of second charge, the Revenue Tribunal has set aside the order of the Deputy Collector and of Collector and confirmed the order of the petitioner for which he was chargesheeted. However, with respect to the first charge, the government sought to convert the same into a misconduct.

2.2 The petitioner replied to the chargesheet vide his reply dated 17.6.1980. Thereafter for quite some time no decision was taken by the respondent. The petitioner was also not allowed to cross efficiency bar and his juniors were promoted to higher posts. The petitioner retired from service in the year 1989. Ultimately inquiry was conducted and vide order dated 2nd February 1990 a punishment was inflicted upon the petitioner to deduct Rs.250/- monthly from the pensionary benefit of the petitioner. It is against the said decision the present petition has been filed.

3.0 Mr. Rawal for the petitioner submitted that the order of the petitioner passed in quasi judicial authority was reversed by appellate authority on a ground which was never raised before the petitioner when the matter was heard by him as quasi judicial authority. Reversion of quasi judicial order in these circumstances can never be considered as misconduct on the part of the petitioner. He submitted that as regards the second charge, the Revenue Tribunal has confirmed the order passed by the petitioner. Therefore penalty inflicted upon the petitioner in view of the said charge is illegal and bad in law. Mr.Rawal further submitted that pending the departmental inquiry juniors to the petitioner were promoted from Class-II to Class-I Officer post retaining the petitioner and therefore the petitioner was already punished without considering his case. According to him, even if the charge no.1 as proved against the petitioner, the respondent authority cannot inflict punishment by way of the order of deducting monthly Rs.250/- from the pensionary benefits of the petitioner.

3.1 Learned counsel for the petitioner relied upon a decision of the Supreme Court in the case of Union of

India Vs. J. Ahmed, reported in AIR 1979 SC 1022 wherein it was held that there may be negligence in performance of duty and a lapse in performance of duty or error of judgement in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of capability would be very high. It was further held that these were personal qualities which a man holding a post of Deputy Commissioner would be expected to possess. They might be relevant considerations on the question of retaining him in the post or for promotion, but such lack of personal quality could not constitute misconduct for the purpose of disciplinary proceedings. Therefore, it could not be said that an inquiry on a charge of misconduct was being held against the respondent and sub-rule (2) of R.16 would be attracted and he would be deemed to have been retained in service till the inquiry was concluded. To retain him service beyond the period of his normal retirement with a view to punishing him was wholly unjustified.

3.2 Mr. Rawal for the petitioner relied upon a decision of the Supreme Court in the case of Zunjarrao Bhikaji Nagarkar Vs. Union of India and others, reported in (1999) 7 SCC 409. In the said case the Supreme Court held that failure to exercise quasi-judicial power properly or wrong application/interpretation of law itself is not a misconduct because wrong decision is subject to judicial supervision in appeal. Negligence, in order to constitute misconduct, should not be mere carelessness, inadvertence or omission, but a culpable negligence. In the present case there is nothing to suggest that the petitioner has committed culpable negligence in order to constitute the same a misconduct.

4.0 Mr. K.P. Rawal for the respondent could not point out anything to show that the alleged negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high in the present case. It is an admitted fact that the petitioner retired in the year 1989 and his juniors were promoted to Class-I posts. Therefore, in view of the aforesaid decision the impugned order requires to be quashed.

5.0 In the result, the petition is allowed. The impugned order dated 2nd February 1990 is quashed and set aside. Rule is made absolute accordingly with no order as

to costs.

[K.S. JHAVERI, J.]
ar